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10 UNITED STATES BANKRUPTCY COURT
11 WESTERN DISTRICT OF WASHINGTON AT SEATTLE

12 IN RE:

NO. 23-10117-TWD

13 WIRELESS ADVOCATES, LLC

**FRE RULE 502(d) AND
CONFIDENTIALITY PROTECTION
ORDER**

14
15 Debtor.

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17 THIS MATTER came before the Court on the Chapter 7 Trustee's Motion for an Order
18 Authorizing Trustee to Implement IT Systems Restructuring and Reject Certain Executory
19 Contracts with Microsoft Corporation and Digital Fortress, Inc. (the "Motion"). The Court,
20 having considered the Motion, Car Toys, Inc.'s Response to the Motion, any other responses to
21 the Motion and replies thereto, the pleadings and files and records of this case, including the
22 FRE Rule 502 Stipulation and Confidentiality Protection Agreement (the "Rule 502
23 Stipulation") executed by the relevant parties, and the argument of counsel, if any, and having
24 found that good cause exists for the entry of this Order in response to the Trustee's Motion and
25 based on the Rule 502 Stipulation, **IT IS HEREBY ORDERED AS FOLLOWS:**

26 a. All capitalized terms used herein and which are not defined herein shall
27 have the same meaning as those terms are defined in the Rule 502 Stipulation.

FRE RULE 502(d) AND CONFIDENTIALITY PROTECTION
ORDER - 1

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1 b. After entry of this Order, Car Toys and the Trustee each may copy data
2 from the Repository for the sole purpose of relocating and then being able to access, use, and
3 store, their own respective data from the Repository in a different storage location. Car Toys'
4 copy to be made for this purpose is referred to herein as the "Car Toys Copy" and the Trustee's
5 copy to be made for this purpose is referred to herein as the "Trustee Copy".

6 c. The creation and retention of the Car Toys Copy and creation and
7 retention of the Trustee Copy pursuant to the terms of this Order does not breach Section 2 of
8 the Access Agreement, referenced in the Rule 502 Stipulation, or any other provision therein.

9 d. The creation and retention of the Car Toys Copy and the Trustee Copy
10 pursuant to this Order is not an authorization for either Party to access to or use any
11 Confidential Information or Privileged Information of the other Party.¹

12 e. Although the Car Toys Copy may contain Comingled Data, Car Toys
13 shall access, view, and use only Car Toys' data that has been stored in the Repository and not
14 any of the Debtor's data. Likewise, although the Trustee Copy may contain Comingled Data,
15 the Trustee shall access, view, and use only the Debtor's data that has been stored in the
16 Repository and not any Car Toys data.

17 f. Protection of Confidential Information.

18 i. Car Toys shall undertake best efforts to ensure that it does not
19 access, otherwise obtain, disclose, or use any Confidential Information of the Debtor as a result
20 of Comingled Data that may be contained in the Car Toys Copy.

21 ii. The Trustee shall undertake best efforts to ensure that she does
22 not access, otherwise obtain, disclose, or use any Confidential Information of Car Toys as a
23 result of Comingled Data that may be contained in the Car Toys Copy.

24 iii. Each Party shall protect and safeguard the confidentiality of all
25 Confidential Information of the other Party that may be contained in the Car Toys Copy and/or

26 ¹ "Confidential Information" has the same meaning here as it is defined in the Access Agreement. "Privileged
27 Information" means "Car Toys Privileged Materials" and "Wireless Privileged Materials" as those terms are
defined in the Access Agreement.

1 in the Trustee Copy with at least the same degree of care as the Trustee or Car Toys would
2 protect their own Confidential Information, but in no event with less than a commercially
3 reasonable degree of care.

4 iv. Each Party shall immediately notify the other Party of any
5 accidental or unauthorized access to or disclosure of Confidential Information and to cooperate
6 fully with any effort undertaken by the other Party to enforce the other Party's rights related to
7 any such accidental or unauthorized access or disclosure of Confidential Information in
8 investigating and mitigating the effect thereof.

9 g. Protection Against Disclosure or Waiver of Privileged Information.

10 i. The production of Privileged Information by the creation and
11 retention of the Car Toys Copy and the Trustee Copy is not a waiver of any applicable privilege
12 or protection from discovery, including the attorney-client privilege, the attorney work product
13 protection, and any other privilege or protection recognized by law, in this case or in any other
14 federal or state proceeding. This Order shall be interpreted to provide the maximum protection
15 allowed by Federal Rule of Evidence 502(d).

16 ii. The provisions of Federal Rule of Evidence 502(b) do not apply.

17 iii. The creation and retention of the Car Toys Copy and the creation
18 and retention of the Trustee Copy is itself not a disclosure of any Privileged Information and is
19 not a waiver of any applicable privilege or protection from discovery in this case or discovery
20 in any other federal or state proceeding.

21 iv. Car Toys shall undertake best efforts to ensure that it and its
22 Representatives² do not access, otherwise obtain, disclose, or use any Privileged Information of
23 the Debtor that may be included in the Car Toys Copy as a result of the Comingled Data.

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27 ² "Representatives" means Representatives as that term is defined in the Data Access Agreement, which is
attached to the Rule 502 Stipulation.

1 v. The Trustee shall undertake best efforts to ensure that she and her
2 Representatives do not access, otherwise obtain, disclose, or use any Privileged Information of
3 Car Toys that may be included in the Car Toys Copy as a result of the Comingled Data.

4 vi. Each Party shall immediately notify the other Party of any
5 accidental or unauthorized access to or disclosure of Privileged Information, immediately
6 sequester and cease any further access or disclosure of such Privileged Information, and
7 cooperate fully with any effort undertaken by the other Party to enforce the other Party's rights
8 related to any such accidental or unauthorized access or disclosure of Privileged Information in
9 investigating and mitigating the effect thereof.

10 vii. The following sections of the Data Access Agreement are
11 incorporated herein and shall apply to the Car Toys Copy and to the Trustee Copy and to any
12 and all access and use of any data contained therein: Section 4, Section 5, Sections 8-10,
13 Section 12, Section 16, and Section 17.

14 h. The Parties shall be responsible for any breach of this Agreement caused by any
15 of their Representatives.

16 i. Termination and Return or Destruction of Data.

17 i. Nothing in this Order creates any obligation by the Trustee to
18 retain any Car Toys data that may be included in the Trustee Copy as a result of the Comingled
19 Data. To the extent that any individual files contained in the Trustee Copy are identifiable
20 without viewing the contents of the file as belonging to Car Toys, the Trustee may delete those
21 files without viewing their contents. Any such deletion does not constitute "accessing" the files
22 under this Order.

23 ii. Nothing in this Order creates any obligation by Car Toys to retain
24 any of the Debtor's data that may be included in the Car Toys Copy as a result of the
25 Comingled Data. To the extent that any individual files contained in the Car Toys Copy are
26 identifiable without viewing the contents of the file as belonging to the Debtor, Car Toys may
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1 delete those files without viewing their contents. Any such deletion does not constitute
2 “accessing” the files under this Order.

3 iii. Within fourteen days of the entry of an order authorizing the
4 Trustee to abandon or dispose of the Debtor’s data contained in the Trustee Copy, the Trustee
5 shall permanently delete and destroy the Trustee Copy, and provide Car Toys with written
6 confirmation of its compliance with this provision.

7 iv. After termination of this action or entry of an order authorizing
8 the Trustee to abandon the Debtor’s data contained in the Trustee Copy, Car Toys shall have no
9 further obligations under this Order.

10 ///END OF ORDER///

PRESENTED BY:

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